IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:: J U D G M E N T ::

S.B. CRIMINAL APPEAL NO.367/1988
(Bal Krishan Vs. State of Rajasthan)

S.B. CRIMINAL APPEAL UNDER SECTION 374(2) Cr.P.C. AGAINST THE JUDGMENT DATED 11.8.88 PASSED BY THE LEARNED SPECIAL JUDGE, (ESSENTIAL COMMODITIES ACT), SIROHI IN CRIMINAL ORIGINAL CASE NO.1/86.

DATE OF JUDGMENT : 22nd November, 2007

P R E S E N T

HON'BLE MR. JUSTICE DEO NARAYAN THANVI

Mr. P.N.Mohanani for the appellant.
Mr. JPS Choudhary, Public Prosecutor.

BY THE COURT :

This appeal is directed against the judgment & order dated 11.8.88 passed by the learned Special Judge, Essential Commodities Act, Sirohi, whereby, he convicted accused appellant Bal Krishan for offence under Section 3/7 of the Essential Commodities Act and sentenced him to one year's rigorous imprisonment and to pay a fine of Rs.2000/-, in default of payment of fine to further undergo three months' rigorous

imprisonment.

Charge against the accused appellant was that in the year 1985, he was the dealer of kerosine oil, which was an essential commodity. Upon checking, it was found that he sold 11 thousand liters of kerosine oil without making any entry in the distribution register and made forged entries in a month regarding distribution of kerosine oil. Upon verification of the stock, it was found that kerosine oil was not distributed as per the ration cards. Accused appellant denied kerosine oil to 51 ration cards holders and violated the Rajasthan Trade Articles (Licensing & Control) Order, 1980 (hereinafter referred to as the "Order, 1980"), specially conditions no.5, 7, 8 and 10 of Parts 10, 17 and 25, whereby, committed offence under Section 3/7 of the Essential Commodities Act. A compliant to this effect was filed by one J.N. Kachhawaha, the Enforcement Inspector, Revdar, District Sirohi. Originally this compliant was filed against Kailash Chandra and Bal Krishan. Substance of the case was explained to the accused, to which they denied the allegations. Prosecution examined 19 witnesses. Statements of accused under Section 313 Cr.P.C. were recorded. No evidence was led in defence. After appreciating the evidence, the learned trial Judge convicted present appellant Bal Krishan as indicated above but acquitted accused Kailash Chandra.

The only ground of challenge in this appeal put forth by the learned counsel for the appellant is that the learned trial Judge has answered all the questions relating to the violation of the Control Order in favour of the accused appellant but the only allegation which is proved against him was that he did not make entries in three ration cards for distribution of kerosine oil and violated conditions contained in order Ex.P-17, but this order Ex.P-17, which has been issued under Order, 1980 is not applicable to the facts of the present case.

Learned counsel for the accused appellant has drawn my attention towards Rajasthan Foodgrains & Other Essential Articles (Regulation of Distribution) Order, 1976 (hereinafter referred to as the "Order, 1976") and the Order, 1980. In the Order, 1976, the power has been given to the authorities to issue directions regarding purchase/sale/distribution of foodgrains and other essential articles. In Part III and Part IV of the Order, 1976, there is a provision as to how the ration cards are to be maintained. Clause 20 of the Order, 1976 reads as under:-

> **"Power to issue directions regarding purchase/sale/distribution of foodgrains and other essential articles.-** Every authorisation holder shall comply with all general or special directions given in writing, from time

> to time by the State Government or the Collector in regard to purchase, sale, storage for sale, distribution and disposal of foodgrains and other essential articles on permits or ration cards or otherwise and the manner in which the accounts thereof shall be maintained and returns submitted."

In this Order, there is a provision that the dealers shall maintain the ration cards and shall file the returns on obtaining permit reports, but in the Order, 1980, there is no such provision for maintaining the ration cards. Clause 25 of the Order, 1980, reference to which has been given in order Ex.P-17 reads as under:

> **"Power to issue directions to dealers (and Producers).-** The State Government or the Collector or the Licensing Authority may issue directions to any dealer (and producer) with regard to purchase, sale, disposal, storage or exhibition of the price and stock list of all or any of the trade articles."

In this clause, there is no provision regarding as to how the ration cards are to be maintained. Order Ex.P-17 has undoubtedly been issued in pursuance to clause 25 of the Order, 1980 on ration cards, but there is no such provision. In fact, this order should have been issued in clause 20 of the Order, 1976. In view of this illegality committed by the Authorities, conviction of the accused appellant is contrary to law and deserves to be

set aside.

Consequently, this appeal is allowed. The conviction and sentence awarded to accused appellant Bal Krishan by the learned Special Judge, Essential Commodities Act, Sirohi vide his judgment dated 11.8.88 are set aside. Accused appellant Bal Krishan is on bail. His bail bonds stand cancelled.

(DEO NARAYAN THANVI), J.

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